

## Agricultural Marketing Service, USDA

## § 1214.202

(b) *Order* means the Kiwifruit Research, Promotion, and Consumer Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term “partnership” includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, kiwifruit production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called “joint ventures,” wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of kiwifruit and the authority to transfer title to the kiwifruit so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produced 500 pounds or more of kiwifruit during the representative period and who:

(1) Owns or shares in the ownership of kiwifruit production facilities and equipment resulting in the ownership of the kiwifruit produced;

(2) Rents kiwifruit production facilities and equipment resulting in the ownership of all or a portion of the kiwifruit produced;

(3) Owns kiwifruit production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the kiwifruit produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit who share the risk of loss and receive a share of the kiwifruit produced. No other acquisition of legal title to kiwifruit shall be deemed to re-

sult in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imported 10,000 pounds or more during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced kiwifruit immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of kiwifruit from the U.S. Customs Service when such kiwifruit are entered or withdrawn for consumption in the United States.

(h) *Kiwifruit* means all varieties of fresh kiwifruit classified under the species *Actinidia deliciosa* or the genus *Actinidia*, whose fruit is a large berry, oval in shape, with a brown skin covered in hairs, which are grown in or imported into the United States.

### § 1214.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the

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referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

### § 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this section, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of kiwifruit produced by the voting producer during the representative period; and

(3) The total volume of kiwifruit imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in presence of an agent of the Office of Inspector General.

(f) Prepare a report on the referendum.

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(g) Announce the results to the public.

### § 1214.204 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions in this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

### § 1214.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

### § 1214.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

### § 1214.207 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

## PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

### Subpart A—Popcorn Promotion, Research, and Consumer Information Order

#### DEFINITIONS

Sec.  
1215.1 Act.  
1215.2 Board.